

From: bekki
To: Microsoft ATR
Date: 1/27/02 6:59pm
Subject: Microsoft Settlement

Renata Hesse, Trial Attorney
Suite 1200, Antitrust Division, Department of Justice,
601 D Street NW, Washington, DC 20530

Re: Public comment (Microsoft case settlement) that under the Tunney Act must be considered before the settlement is accepted.

Dear Mrs. Hesse:

I would like to respectfully request that you reject the Proposed Final Judgment in its present form.

The Proposed Final Judgment as currently written appears to lack an effective enforcement mechanism. Although it provides for the creation of a Technical Committee with investigative powers, it leaves actual enforcement to the legal system. I believe this will cause the Technical Committee to quickly become irrelevant. I am convinced Microsoft will waste no time in exploiting this fact in view of the lack of resolve shown by the Justice Dept. to carry out an effective punishment in the sentencing portion of the case. If this administration does not show now that it is capable of acting with forceful determination, then I have no doubt that Microsoft will be emboldened and will push its bullying practices to new heights.

There are too many problems with the PFJ in its current form to address effectively in this letter so I would like to keep it as brief as my conscience will allow so I will just point out several of the most glaring injustices:

Microsoft is going to replace Java with .NET. But the PFJ does not allow users to replace Microsoft.NET with competing middleware. This is a serious flaw since the PFJ already allows users to replace Microsoft Java with a competing product. In any case, the PFJ's definition of "Microsoft Middleware" is so narrow that it can be easily sidestepped making any remedy tied to this definition irrelevant.

The PFJ's definition of Windows is also so narrow that it will surely not cover subsequent versions or other related Windows-based operating systems (XP, CE, etc.) that use the Win32 API and are advertised as being "Windows Powered". This shortcoming will again make any remedy tied to the definition irrelevant.

By not providing a remedy helping software vendors engaged in making Windows-compatible operating systems, the PFJ is ignoring an opportunity

to foster healthy competition in the Intel-compatible operating system market. Furthermore, by allowing these practices, the PFJ effectively condones the extension of Microsoft's monopoly in Intel-compatible operating systems. Microsoft's continued leverage of their illegal and ill-gotten monopoly on the desktop has now positioned the company to extend its control to the Internet. As a citizen I am dismayed: the continued indifference of this administration will ultimately lead to a monolithic entity controlling all relevant aspects of our cyber-society. As a consumer I am saddened: we will face a world devoid of choice in that arena. In the end, we will all have to pay the price.

The PFJ, by allowing this unclear legal situation to continue, is inhibiting the market acceptance of competing operating systems: Section III.I of the PFJ requires Microsoft to offer to license certain intellectual property rights, but it does nothing to require Microsoft to clearly announce which of its many software patents protect the Windows APIs. This leaves Windows-compatible operating systems in an uncertain state in which they do not know if they are infringing on Microsoft software patents.

It is disconcerting that the PFJ still allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system. Section III.B. requires Microsoft to license Windows on uniform terms and at published prices to the top 20 OEMs, but says nothing about smaller OEMs. This leaves Microsoft free to retaliate against smaller OEMs. Section III.B. also allows Microsoft to offer unspecified "Market Development Allowances" to OEMs that promote other unrelated Microsoft applications or products. This is a huge loophole that will again allow Microsoft to leverage its monopoly into other areas.

To conclude, I would like to plead with this administration to stop its apparent indifference to the wrong-doings of large corporations such as Microsoft and to apply true remedies with real teeth when a corporation has been found guilty of monopoly.

I sincerely hope that the currently unfolding Enron debacle will make this administration more sensitive to the fact that tacitly supporting another large company's practices, like Microsoft's, by turning a blind eye to its illegal business practices will ultimately carry an enormous price to our society.

You now have a historic opportunity to redress this and apply real remedies that will send the message that illegal business practices will not be tolerated any more.

I urge you to act now, decisively, and with justice on behalf of our future. I want to believe that you will do the right thing.

I really wish to thank you for your time and for considering my views.

Sincerely-

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